



March 27, 2015

ENGROSSED SENATE BILL No. 373

DIGEST OF SB 373 (Updated March 25, 2015 4:58 pm - DI 101)

Citations Affected: IC 4-21.5; IC 24-4.3 ; IC 24-4.5.

Synopsis: Civil proceeding advance payment transactions. Defines a "civil proceeding advance payment transaction", or "CPAP transaction", as a nonrecourse transaction in which a person (CPAP provider) provides to a consumer claimant in a civil proceeding a funded amount, the repayment of which is: (1) required only if the consumer claimant prevails in the civil proceeding; and (2) sourced
(Continued next page)

Effective: Upon passage; July 1, 2015.

Head, Young R Michael, Taylor

(HOUSE SPONSOR — LEHMAN)

January 12, 2015, read first time and referred to Committee on Judiciary.
January 12, 2015, reassigned to Committee on Civil Law.
February 9, 2015, amended, reported favorably — Do Pass.
February 17, 2015, read second time, amended, ordered engrossed. Returned to second reading.
February 18, 2015, engrossed.
February 19, 2015, re-read second time, amended, ordered engrossed.
February 20, 2015, re-engrossed.
February 23, 2015, read third time, passed. Yeas 47, nays 2.
HOUSE ACTION
March 3, 2015, read first time and referred to Committee on Financial Institutions.
March 26, 2015, amended, reported — Do Pass.

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from the proceeds of the civil proceeding. Requires a CPAP provider to register with the department of financial institutions (department). Sets forth requirements, including disclosure requirements, for a contract (CPAP contract) entered into by a CPAP provider and a consumer claimant. Sets forth certain requirements and prohibitions with respect to CPAP transactions, including limits on the funded amount and specifications for the CPAP contract amount. Permits the department to take certain actions to: (1) determine compliance with; and (2) pursue remedies for violations of; these provisions. Permits the department to adopt rules to implement these provisions. Specifies that the Uniform Consumer Credit Code does not apply to a CPAP transaction.



March 27, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 373

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.153-2011,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 6. (a) Notice shall be given under this section
4 concerning the following:

5 (1) A safety order under IC 22-8-1.1.

6 (2) Any order that:

7 (A) imposes a sanction on a person or terminates a legal right,
8 duty, privilege, immunity, or other legal interest of a person;

9 (B) is not described in section 4 or 5 of this chapter or
10 IC 4-21.5-4; and

11 (C) by statute becomes effective without a proceeding under
12 this chapter if there is no request for a review of the order
13 within a specified period after the order is issued or served.

14 (3) A notice of program reimbursement or equivalent
15 determination or other notice regarding a hospital's
16 reimbursement issued by the office of Medicaid policy and

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1 planning or by a contractor of the office of Medicaid policy and
 2 planning regarding a hospital's year end cost settlement.

3 (4) A determination of audit findings or an equivalent
 4 determination by the office of Medicaid policy and planning or by
 5 a contractor of the office of Medicaid policy and planning arising
 6 from a Medicaid postpayment or concurrent audit of a hospital's
 7 Medicaid claims.

8 (5) A license **suspension or** revocation under:

9 (A) IC 24-4.4-2;

10 (B) IC 24-4.5-3;

11 (C) IC 28-1-29;

12 (D) IC 28-7-5;

13 (E) IC 28-8-4; or

14 (F) IC 28-8-5.

15 (6) An order issued by the:

16 (A) division of aging or the bureau of aging services; or

17 (B) division of disability and rehabilitative services or the
 18 bureau of developmental disabilities services;

19 against providers regulated by the division of aging or the bureau
 20 of developmental disabilities services and not licensed by the
 21 state department of health under IC 16-27 or IC 16-28.

22 **(7) The denial, suspension, or revocation of a certificate of**
 23 **registration under IC 24-4.3.**

24 (b) When an agency issues an order described by subsection (a), the
 25 agency shall give notice to the following persons:

26 (1) Each person to whom the order is specifically directed.

27 (2) Each person to whom a law requires notice to be given.

28 A person who is entitled to notice under this subsection is not a party
 29 to any proceeding resulting from the grant of a petition for review
 30 under section 7 of this chapter unless the person is designated as a
 31 party in the record of the proceeding.

32 (c) The notice must include the following:

33 (1) A brief description of the order.

34 (2) A brief explanation of the available procedures and the time
 35 limit for seeking administrative review of the order under section
 36 7 of this chapter.

37 (3) Any other information required by law.

38 (d) An order described in subsection (a) is effective fifteen (15) days
 39 after the order is served, unless a statute other than this article specifies
 40 a different date or the agency specifies a later date in its order. This
 41 subsection does not preclude an agency from issuing, under
 42 IC 4-21.5-4, an emergency or other temporary order concerning the



1 subject of an order described in subsection (a).

2 (e) If a petition for review of an order described in subsection (a) is
 3 filed within the period set by section 7 of this chapter and a petition for
 4 stay of effectiveness of the order is filed by a party or another person
 5 who has a pending petition for intervention in the proceeding, an
 6 administrative law judge shall, as soon as practicable, conduct a
 7 preliminary hearing to determine whether the order should be stayed in
 8 whole or in part. The burden of proof in the preliminary hearing is on
 9 the person seeking the stay. The administrative law judge may stay the
 10 order in whole or in part. The order concerning the stay may be issued
 11 after an order described in subsection (a) becomes effective. The
 12 resulting order concerning the stay shall be served on the parties and
 13 any person who has a pending petition for intervention in the
 14 proceeding. It must include a statement of the facts and law on which
 15 it is based.

16 SECTION 2. IC 4-21.5-3-7, AS AMENDED BY P.L.6-2012,
 17 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 UPON PASSAGE]: Sec. 7. (a) To qualify for review of a personnel
 19 action to which IC 4-15-2.2 applies, a person must comply with
 20 IC 4-15-2.2-42. To qualify for review of any other order described in
 21 section 4, 5, or 6 of this chapter, a person must petition for review in a
 22 writing that does the following:

23 (1) States facts demonstrating that:

24 (A) the petitioner is a person to whom the order is specifically
 25 directed;

26 (B) the petitioner is aggrieved or adversely affected by the
 27 order; or

28 (C) the petitioner is entitled to review under any law.

29 (2) Includes, with respect to determinations of notice of program
 30 reimbursement and audit findings described in section 6(a)(3) and
 31 6(a)(4) of this chapter, a statement of issues that includes:

32 (A) the specific findings, action, or determination of the office
 33 of Medicaid policy and planning or of a contractor of the
 34 office of Medicaid policy and planning from which the
 35 provider is appealing;

36 (B) the reason the provider believes that the finding, action, or
 37 determination of the office of Medicaid policy and planning or
 38 of a contractor of the office of Medicaid policy and planning
 39 was in error; and

40 (C) with respect to each finding, action, or determination of
 41 the office of Medicaid policy and planning or of a contractor
 42 of the office of Medicaid policy and planning, the statutes or



rules that support the provider's contentions of error.
 Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) with respect to an order described in section 4, 5, 6(a)(1), 6(a)(2), ~~or 6(a)(5)~~, **or 6(a)(7)** of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) with respect to a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall assign an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the



review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

SECTION 3. IC 24-4.3 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 4.3. CIVIL PROCEEDING ADVANCE PAYMENT TRANSACTIONS

Chapter 1. Application, Construction, and Definitions

Sec. 1. This article applies to:

- (1) civil proceeding advance payment transactions; and
 - (2) civil proceeding advance payment contracts;
- offered or entered into after June 30, 2015.

Sec. 2. (a) As used in this article, "charge", with respect to a CPAP transaction, means an amount that:

- (1) is imposed by a CPAP provider and payable or assignable by or on behalf of a consumer claimant; and
- (2) is in addition to the funded amount and the contract amount;

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount, or of how the amount is determined or calculated by the CPAP provider.

(b) The term includes any:

- (1) administrative, origination, or underwriting fee;
 - (2) case review, case servicing, or document management fee;
- or
- (3) other fee related to services provided or costs incurred by the CPAP provider in connection with the CPAP transaction; imposed by the CPAP provider and payable or assignable by or on



1 behalf of the consumer claimant, regardless of the term used by the
 2 CPAP provider in the CPAP contract to identify the amount, or of
 3 how the amount is determined or calculated by the CPAP provider.

4 Sec. 3. (a) As used in this article, "civil proceeding" means:

- 5 (1) a civil action;
- 6 (2) a mediation, an arbitration, or any other alternative
- 7 dispute resolution proceeding; or
- 8 (3) an administrative proceeding before:
 - 9 (A) an agency or instrumentality of the state; or
 - 10 (B) a political subdivision, or an agency or instrumentality
 - 11 of a political subdivision, of the state;

12 that is filed in, or is under the jurisdiction of, a court with
 13 jurisdiction in Indiana, a tribunal in Indiana, or an agency or
 14 instrumentality described in subdivision (3) in Indiana.

15 (b) The term includes all proceedings arising out of or relating
 16 to the proceeding described in subsection (a), including any:

- 17 (1) proceedings on appeal or remand; and
- 18 (2) enforcement, ancillary, or parallel proceedings.

19 Sec. 4. As used in this article, "civil proceeding advance
 20 payment contract", or "CPAP contract", means a contract for a
 21 CPAP transaction that a CPAP provider enters into, or offers to
 22 enter into, with a consumer claimant.

23 Sec. 5. (a) As used in this article, "civil proceeding advance
 24 payment provider", or "CPAP provider", means a person that:

- 25 (1) enters into, or offers to enter into, a CPAP transaction
- 26 with a consumer claimant in connection with a civil
- 27 proceeding; and
- 28 (2) is registered with, or is required to be registered with, the
- 29 department under IC 24-4.3-2.

30 (b) The term does not include any of the following:

- 31 (1) An immediate family member of a consumer claimant.
- 32 (2) A financial institution, a creditor subject to IC 24-4.5, or
- 33 any other person:
 - 34 (A) that provides financing to a CPAP provider; or
 - 35 (B) to whom a CPAP provider grants a security interest or
 - 36 assigns any rights or interest in a CPAP transaction.
- 37 (3) An attorney, an accountant, a tax consultant, a public or
- 38 private benefits planning professional, or a financial
- 39 professional who provides services to a consumer claimant in
- 40 connection with a civil proceeding.

41 Sec. 6. (a) As used in this article, "civil proceeding advance
 42 payment transaction", or "CPAP transaction", means a



nonrecourse transaction in which a CPAP provider provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:

(1) required only if the consumer claimant prevails in the civil proceeding; and

(2) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(b) The term includes a transaction:

(1) that is structured as a purchase; and

(2) in which the CPAP provider purchases from the consumer claimant a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

Sec. 7. As used in this article, "consumer claimant" means an individual:

(1) who is or may become a plaintiff, a claimant, or a demandant in a civil proceeding; and

(2) who:

(A) is offered a CPAP transaction by a CPAP provider; or

(B) enters into a CPAP transaction with a CPAP provider;

regardless of whether the individual is a resident of Indiana.

Sec. 8. (a) As used in this article, "contract amount", with respect to a CPAP transaction, means an amount that is:

(1) in addition to the funded amount;

(2) payable or assignable to the CPAP provider only if the consumer claimant prevails in the consumer claimant's civil proceeding; and

(3) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution;

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount, or of how the amount is determined or calculated by the CPAP provider.

(b) The term does not include charges.

Sec. 9. As used in this article, "department" refers to the members of the department of financial institutions.

Sec. 10. As used in this article, "director" refers to the director of the department of financial institutions or the director's designee.



1 **Sec. 11. (a) As used in this article, "funded amount", with**
 2 **respect to a CPAP transaction, means the amount of money:**

3 **(1) that is provided to the consumer claimant by the CPAP**
 4 **provider; and**

5 **(2) the repayment of which is:**

6 **(A) required only if the consumer claimant prevails in the**
 7 **consumer claimant's civil proceeding; and**

8 **(B) sourced from the proceeds of the civil proceeding,**
 9 **whether the proceeds result from a judgment, a settlement,**
 10 **or some other resolution;**

11 **regardless of the term used by the CPAP provider in the CPAP**
 12 **contract to identify the amount.**

13 **(b) In the case of a CPAP transaction described in section 6(b)**
 14 **of this chapter, the term means the price:**

15 **(1) that is paid by the CPAP provider in purchasing from the**
 16 **consumer claimant a contingent right to receive a share of the**
 17 **potential proceeds of the consumer claimant's civil**
 18 **proceeding; and**

19 **(2) the amount of which must be repaid only:**

20 **(A) if the consumer claimant prevails in the consumer**
 21 **claimant's civil proceeding; and**

22 **(B) from the proceeds of the civil proceeding, whether the**
 23 **proceeds result from a judgment, a settlement, or some**
 24 **other resolution;**

25 **regardless of the term used by the CPAP provider in the CPAP**
 26 **contract to identify the amount.**

27 **(c) The term does not include:**

28 **(1) the contract amount; or**

29 **(2) charges.**

30 **Sec. 12. As used in this article, "funding date", with respect to**
 31 **a CPAP transaction, means the date on which a CPAP provider**
 32 **transfers the funded amount to the consumer claimant by:**

33 **(1) personal delivery;**

34 **(2) wire, automated clearing house, or other electronic means;**
 35 **or**

36 **(3) insured, certified, or registered United States mail.**

37 **Chapter 2. Registration of CPAP Providers With the**
 38 **Department**

39 **Sec. 1. Except as provided in section 2(g) of this chapter, after**
 40 **June 30, 2015, a person may not enter into, or offer to enter into,**
 41 **a CPAP transaction with a consumer claimant, or otherwise**
 42 **engage in business as a CPAP provider:**



- (1) except as authorized by this article; and
- (2) unless the person first receives a certificate of registration from the department under this chapter.

Sec. 2. (a) An applicant for a certificate of registration under this chapter shall file an application with the department in the form and manner prescribed by the director. An application form prescribed by the director under this chapter must require the applicant to provide the information that the director determines is necessary to evaluate the character and fitness of the applicant.

(b) The department may issue a certificate of registration under this chapter if the department finds that an applicant's business will be operated honestly and fairly within the purposes of this article. If the department denies an application under this chapter, the director shall provide to the applicant a written notice stating that the application has been denied and setting forth the reasons for the denial. In rules adopted under:

- (1) section 4 of this chapter; or
- (2) IC 24-4.3-5-5;

the department may set forth circumstances under which a certificate issued under this chapter may be revoked or suspended for cause, including the failure of any applicant or certificate holder to pay an application fee or a renewal fee described in subsection (f). A notice of a denial, revocation, or suspension issued by the department under this subsection is effective in accordance with IC 4-21.5-3-6(d).

(c) Upon written request, an applicant for a certificate of registration under this chapter is entitled to an administrative review, in the manner provided in IC 4-21.5, of the issue of the applicant's qualifications for a certificate of registration under this chapter if either of the following applies:

- (1) The director provides to the applicant a written notice that the applicant's application has been denied, as described in subsection (b), and the applicant files a timely request for a review under IC 4-21.5-3-7.
- (2) The department does not issue a decision on the applicant's application not later than sixty (60) days after the date the application is filed, and the applicant files a request for an administrative review in accordance with the procedures set forth in IC 4-21.5-3-7 not later than seventy-five (75) days after the date the application is filed.

(d) A certificate of registration issued by the department under this chapter must be renewed with the department on the dates and



1 in the manner and form prescribed by the director, but not less
2 frequently than every two (2) years.

3 (e) If, at any time, any information contained in:

4 (1) an initial application under subsection (a); or

5 (2) a renewal form or application under subsection (d);

6 is or becomes inaccurate or incomplete in a material respect, the
7 applicant or registered CPAP provider promptly shall file a
8 correcting amendment with the department in the form and
9 manner prescribed by the director.

10 (f) The department may establish, in an amount fixed by the
11 department under IC 28-11-3-5, either of the following to cover the
12 department's expenses in administering this article:

13 (1) An application fee that an applicant must submit with an
14 initial application under subsection (a).

15 (2) A renewal fee that a registered CPAP provider must
16 submit with a renewal form or application under subsection
17 (d).

18 The department may impose a fee under IC 28-11-3-5 for each day
19 that an application fee or a renewal fee, or any related documents
20 that are required to be submitted with an initial application or a
21 renewal application, are delinquent.

22 (g) Notwithstanding subsection (a), a person that:

23 (1) before May 13, 2015, enters into one (1) or more CPAP
24 transactions that are:

25 (A) made with a consumer claimant in connection with a
26 civil proceeding; and

27 (B) outstanding on July 1, 2015; and

28 (2) submits an application for registration under this chapter
29 to the department after June 30, 2015, and before January 1,
30 2016;

31 may enter into, or offer to enter into, a CPAP transaction with a
32 consumer claimant, or otherwise engage in business as a CPAP
33 provider, while the person's application for registration under this
34 chapter is pending with the department. However, if the
35 department denies the person's application under this chapter, the
36 person may not enter into, or offer to enter into, any new CPAP
37 transaction during the period beginning on the effective date of the
38 department's denial under subsection (b) and ending on the
39 effective date of any certificate of registration subsequently issued
40 to the person by the department under this chapter, subject to the
41 person's right to a review under subsection (c) and to any right to
42 a stay or an appeal of the denial available under IC 4-21.5. A



1 CPAP transaction entered into by the person before the effective
 2 date of the department's denial under subsection (b) is not subject
 3 to this article, and a CPAP contract entered into by the person and
 4 a consumer claimant before the effective date of the department's
 5 denial under subsection (b) remains in effect according to its terms,
 6 notwithstanding the department's denial of an application
 7 described in subdivision (2).

8 Sec. 3. (a) Each application for a certificate of registration
 9 under section 2 of this chapter must be accompanied by proof that
 10 the applicant has executed a surety bond in accordance with this
 11 section.

12 (b) A surety bond issued under this section must:

- 13 (1) be in a form prescribed by the director;
- 14 (2) be in effect during the term of the certificate of
- 15 registration issued under this chapter;
- 16 (3) be payable to the department for the benefit of:
 - 17 (A) the state; and
 - 18 (B) consumer claimants who enter into a CPAP transaction
 - 19 with the CPAP provider;
- 20 (4) be in an amount determined by the director, but not
- 21 greater than fifty thousand dollars (\$50,000); and
- 22 (5) have payment conditioned upon the CPAP provider's or
- 23 any of the CPAP provider's employees' or agents'
- 24 noncompliance with or violation of this article or other
- 25 applicable federal or state laws or regulations.

26 (c) Beginning with the first renewal of a certificate of
 27 registration under this chapter, for each renewal period that a
 28 registered CPAP provider continues to engage in business as a
 29 CPAP provider in connection with any civil proceedings, the
 30 registered CPAP provider shall file a new or an additional surety
 31 bond in an amount that ensures that the registered CPAP
 32 provider's surety bond under this section is equal to the amount
 33 determined by the director under subsection (b)(4).

34 (d) If the principal amount of a surety bond required under this
 35 section is reduced by payment of a claim or judgment, the
 36 registered CPAP provider for whom the bond is issued shall
 37 immediately notify the director of the reduction and, not later than
 38 thirty (30) days after notice by the director, file a new or an
 39 additional surety bond in an amount set by the director. The
 40 amount of the new or additional bond set by the director must be
 41 at least the amount of the bond before payment of the claim or
 42 judgment.



1 (e) If for any reason a surety terminates a bond issued under
 2 this section, the registered CPAP provider shall immediately notify
 3 the department and file a new surety bond in the amount
 4 determined by the director under subsection (b)(4).

5 (f) Cancellation of a surety bond issued under this section does
 6 not affect any liability incurred or accrued during the period when
 7 the surety bond was in effect.

8 (g) The director may obtain satisfaction from a surety bond
 9 issued under this section if the director incurs expenses, issues a
 10 final order, or recovers a final judgment under this chapter.

11 Sec. 4. (a) The department may adopt rules under IC 4-22-2,
 12 including emergency rules adopted in the manner provided by
 13 IC 4-22-2-37.1, to implement this chapter. Rules or emergency
 14 rules adopted by the department under this section must take effect
 15 by a date that will enable a person to apply to the department for
 16 a certificate of registration under this chapter beginning July 1,
 17 2015.

18 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
 19 adopted by the department in the manner provided by
 20 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 21 that supersedes the emergency rule is adopted by the department
 22 under IC 4-22-2-24 through IC 4-22-2-36.

23 Chapter 3. Contract Requirements and Disclosures

24 Sec. 1. (a) Before presenting a CPAP contract to a consumer
 25 claimant for the consumer claimant's signature, a CPAP provider
 26 shall ensure that the CPAP contract:

27 (1) is complete;

28 (2) has been filled in to include all amounts, dates, names,
 29 terms, provisions, and information specific to the CPAP
 30 contract, the CPAP provider, the consumer claimant, and the
 31 consumer claimant's civil proceeding; and

32 (3) meets the requirements of this chapter, including the
 33 disclosure requirements set forth in section 2 of this chapter.

34 (b) Each page of a CPAP contract must include the initials of the
 35 consumer claimant.

36 (c) If a consumer claimant is represented by an attorney in the
 37 civil proceeding on which a CPAP transaction is based, the CPAP
 38 provider shall, not later than three (3) days after the CPAP
 39 contract is executed by the CPAP provider and the consumer
 40 claimant, send to the consumer claimant's attorney by insured,
 41 certified, or registered United States mail a written notice that:

42 (1) states that a CPAP contract has been entered into by the



1 consumer claimant and the CPAP provider;

2 (2) directs the consumer claimant's attorney to disburse to the
3 CPAP provider through:

4 (A) a trust account of the consumer claimant's attorney; or

5 (B) a settlement fund established to receive the proceeds of
6 the civil proceeding on behalf of the consumer claimant;

7 any proceeds of the consumer claimant's civil proceeding that
8 the CPAP provider may receive under IC 24-4.3-4-4(c); and

9 (3) includes the name under which the CPAP provider does
10 business, an address to which the consumer claimant's
11 attorney may address correspondence, and the contact
12 information for the CPAP provider's employee or agent with
13 whom the consumer claimant's attorney may correspond.

14 (d) A CPAP contract shall be executed in duplicate. Upon
15 execution of the CPAP contract, the CPAP provider shall:

16 (1) furnish one (1) duplicate original and at least one (1) copy
17 of the CPAP contract to the consumer claimant; and

18 (2) retain for the CPAP provider's records one (1) duplicate
19 original and at least one (1) copy of the CPAP contract.

20 (e) A CPAP provider may not use any CPAP contract form,
21 other than a standard CPAP contract form prescribed by the
22 department in rules adopted by the department under section 3 of
23 this chapter, in connection with a civil proceeding unless the
24 department first approves the CPAP contract form.

25 Sec. 2. (a) A CPAP contract must include the disclosures set
26 forth in this section. The disclosures required by this section:

27 (1) constitute material terms of the CPAP contract; and

28 (2) must:

29 (A) be set forth in at least 12 point boldface type and
30 comply with any other typeface or stylistic specifications
31 set forth in this section; and

32 (B) be placed clearly and conspicuously within the
33 contract.

34 (b) The front page of a CPAP contract must include, under
35 appropriate headings, language specifying the following:

36 (1) The funded amount to be paid to the consumer claimant
37 by the CPAP provider.

38 (2) The funding date.

39 (3) An itemization of all charges, whether assessed one (1)
40 time or on a recurring basis, that are payable or assignable by
41 the consumer claimant to the CPAP provider. For each
42 charge listed, the CPAP provider shall identify whether the



charge:

(A) is to be assigned by the consumer claimant to the CPAP provider from the proceeds, if any, of the consumer claimant's civil proceeding; or

(B) is otherwise payable by the consumer claimant to the CPAP provider.

Charges described in clause (A) must be included in the payment schedule described in subdivision (5). For charges described in clause (B), the CPAP provider shall set forth a separate payment schedule identifying the dates and amounts due.

(4) An identification of the following amounts to be assigned by the consumer claimant to the CPAP provider if the resolution of the consumer claimant's civil proceeding results in proceeds to the consumer claimant:

(A) The funded amount.

(B) The contract amount. In identifying the contract amount under this clause, it is sufficient for the CPAP provider to identify the method, formula, or multiplier (as required by IC 24-4.3-4-2(1)(A)) by which the contract amount will be determined as of the date on which the CPAP provider receives payment from the proceeds of the consumer claimant's civil proceeding.

(5) For amounts assignable by the consumer claimant to the CPAP provider from the proceeds of the consumer claimant's civil proceeding (including the funded amount, the contract amount, and any applicable charges), a payment schedule that lists:

(A) the dates; and

(B) the amounts assignable by the consumer claimant to the CPAP provider as of each date listed (regardless of whether and when such amounts are actually paid or assigned, depending on the outcome of the consumer's civil proceeding and the date on which any proceeds from the civil proceeding become available for disbursement);

beginning with the date that is one hundred eighty (180) days after the funding date, continuing every one hundred eighty (180) days thereafter, and ending with the date the amounts are actually paid or assigned to the CPAP provider, as required by IC 24-4.3-4-2(1)(B).

(c) A CPAP contract must contain, in text that is surrounded by a box, a statement setting forth a right of rescission that allows the



1 consumer claimant to cancel the contract without penalty or
 2 further obligation if the consumer claimant does either of the
 3 following:

4 (1) Not later than five (5) days after the funding date, returns
 5 to the CPAP provider the full funded amount by hand
 6 delivering the CPAP provider's uncashed check to the CPAP
 7 provider's business location.

8 (2) Mails, to the address specified in the CPAP contract and
 9 by insured, certified, or registered United States mail:

10 (A) a notice of cancellation; and

11 (B) the full funded amount, in the form of:

12 (i) the CPAP provider's uncashed check;

13 (ii) a registered or certified check; or

14 (iii) a money order;

15 in a mailing that is postmarked not later than five (5) days
 16 after the funding date.

17 (d) A CPAP contract must contain, in text that is printed in all
 18 capital letters and surrounded by a box, the following statement:

19 "THE FUNDED AMOUNT (or other term used by the CPAP
 20 provider in the CPAP contract), THE CONTRACT
 21 AMOUNT (or other term used by the CPAP provider in the
 22 CPAP contract), AND THE _____ (insert names of any
 23 charges the repayment of which is to be sourced from the
 24 proceeds of the consumer claimant's civil proceeding) ARE
 25 PAYABLE ONLY FROM THE PROCEEDS OF YOUR
 26 CIVIL PROCEEDING, AND ONLY TO THE EXTENT
 27 THAT THERE ARE AVAILABLE PROCEEDS FROM
 28 YOUR CIVIL PROCEEDING. YOU WILL NOT OWE
 29 (insert name of CPAP provider) THE FUNDED AMOUNT
 30 (or other term used by the CPAP provider in the CPAP
 31 contract), THE CONTRACT AMOUNT (or other term used
 32 by the CPAP provider in the CPAP contract), OR THE
 33 _____ (insert names of any charges the repayment of
 34 which is to be sourced from the proceeds of the consumer
 35 claimant's civil proceeding) IF THERE ARE NO PROCEEDS
 36 FROM YOUR CIVIL PROCEEDING, UNLESS YOU HAVE
 37 VIOLATED ANY MATERIAL TERM OF THIS
 38 CONTRACT OR YOU HAVE COMMITTED FRAUD
 39 AGAINST (insert name of CPAP provider).".

40 (e) A CPAP contract must contain a statement as to whether
 41 and under what circumstances:

42 (1) the consumer claimant's rights and obligations under the



1 CPAP contract may be sold, assigned, pledged, or transferred
 2 by the consumer claimant and, if so, whether and at what
 3 point the consumer claimant must obtain the consent of, or
 4 provide notice to, the CPAP provider of such sale, assignment,
 5 pledge, or transfer; and

6 (2) the CPAP provider's rights and obligations under a CPAP
 7 contract may be sold, assigned, pledged, or transferred by the
 8 CPAP provider and, if so, whether and at what point the
 9 CPAP provider must obtain the consent of, or provide notice
 10 to, the consumer claimant of such sale, assignment, pledge, or
 11 transfer.

12 (f) A CPAP contract must contain a statement as to whether,
 13 how often, and under what circumstances the CPAP provider may
 14 request from the consumer claimant or, subject to the consent of
 15 the consumer claimant's attorney, from the consumer claimant's
 16 attorney periodic updates or other information concerning the
 17 consumer claimant's civil proceeding, including any of the
 18 following documents or information that may be sought by the
 19 CPAP provider:

20 (1) Notice of any receipt by the consumer claimant or, subject
 21 to the consent of the consumer claimant's attorney, by the
 22 consumer claimant's attorney of proceeds, or written
 23 promises to pay proceeds, from the civil proceeding.

24 (2) Copies of nonprivileged materials, including pleadings,
 25 notices, orders, motions, briefs, or other documents filed in
 26 the civil proceeding by any person or party.

27 (3) Documents or verbal information concerning
 28 nonprivileged matters or developments in connection with the
 29 civil proceeding.

30 (g) A CPAP contract must contain the following statement
 31 immediately above the signature line for the consumer claimant:

32 "Do not sign this contract before you read it completely or if
 33 it contains any blank spaces. You are entitled to a completely
 34 filled in copy of this contract. Before you sign this contract,
 35 you should obtain the advice of an attorney. Depending on
 36 your circumstances, you may want to consult an accountant,
 37 a tax consultant, a public or private benefits planning
 38 professional, or a financial professional. By signing this
 39 contract, you acknowledge that if you are represented by an
 40 attorney in your civil proceeding, your attorney has provided
 41 no tax, accounting, public or private benefits planning, or
 42 financial advice concerning this transaction between you and



(insert name of CPAP provider).".

Sec. 3. (a) The department may adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to implement this chapter. In adopting rules or emergency rules under this section, the department may prescribe a standard CPAP contract form that complies with this chapter for use by CPAP providers in entering into CPAP transactions with consumer claimants. Rules or emergency rules adopted by the department to prescribe a standard CPAP contract form must take effect by a date that will enable such a form to be available to CPAP providers beginning July 1, 2015.

(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department in the manner provided by IC 4-22-2-37.1 to implement this chapter expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36.

Chapter 4. Requirements and Prohibitions

Sec. 1. Subject to section 3(b) of this chapter, the total funded amount in a CPAP transaction in connection with any one (1) civil proceeding may not exceed five thousand dollars (\$5,000). A CPAP provider shall transfer the funded amount to a consumer claimant not later than the funding date, as set forth in the CPAP contract, by one (1) of the following means:

(1) Personal delivery.

(2) Wire, automated clearing house, or other electronic means.

(3) Insured, certified, or registered United States mail.

Sec. 2. Subject to section 3 of this chapter, the contract amount in a CPAP transaction:

(1) must be calculated as a predetermined amount:

(A) according to a method, formula, or multiplier determined by the CPAP provider, as described in IC 24-4.3-3-2(b)(4)(B); and

(B) based on one hundred eighty (180) day intervals measured from the funding date through the date of assignment to the CPAP provider, as described in IC 24-4.3-3-2(b)(5);

(2) may be based on, or determined as a percentage of, the funded amount; and

(3) may not be determined as a percentage of the consumer claimant's recovery from the consumer claimant's civil proceeding.



1 **Sec. 3. (a) Regardless of the contract amount that results from**
 2 **the calculation described in section 2(1) of this chapter, a CPAP**
 3 **provider may not assess or collect, with respect to any one (1)**
 4 **CPAP transaction, a contract amount that exceeds twenty-five**
 5 **percent (25%) of the funded amount.**

6 **(b) A CPAP provider may not:**

7 **(1) structure a CPAP transaction arising from the same civil**
 8 **proceeding:**

9 **(A) as more than one (1) transaction; or**

10 **(B) in any other manner; or**

11 **(2) impose any charges under the CPAP contract, whether**
 12 **assignable from the proceeds of the consumer claimant's civil**
 13 **proceeding or otherwise payable to the CPAP provider, in an**
 14 **amount that:**

15 **(A) exceeds any amount, percentage, limit, or cap**
 16 **concerning charges and prescribed by the department in**
 17 **rules adopted under section 7 of this chapter; or**

18 **(B) grossly exceeds the value of the services provided or**
 19 **costs incurred by the CPAP provider in consideration of**
 20 **the charges;**

21 **for the purpose of avoiding the prohibition set forth in**
 22 **subsection (a) or the limitation on the funded amount set forth**
 23 **in section 1 of this chapter.**

24 **Sec. 4. (a) Subject to IC 24-4.3-3-2(e)(1) and except as otherwise**
 25 **provided in a CPAP contract and agreed to by a consumer**
 26 **claimant, a contingent right to receive a share of the potential**
 27 **proceeds of a consumer claimant's civil proceeding (whether the**
 28 **proceeds result from a judgment, a settlement, or some other**
 29 **resolution) may be sold, assigned, pledged, or transferred by the**
 30 **consumer claimant.**

31 **(b) Subject to IC 24-4.3-3-2(e)(2) and except as otherwise**
 32 **provided in a CPAP contract and agreed to by a consumer**
 33 **claimant, a CPAP provider's rights and obligations under a CPAP**
 34 **contract may be sold, assigned, pledged, or transferred by the**
 35 **CPAP provider.**

36 **(c) A CPAP provider's right to receive a share of the potential**
 37 **proceeds of a consumer claimant's civil proceeding is subordinate**
 38 **only to any:**

39 **(1) attorney's lien;**

40 **(2) medical liens; or**

41 **(3) statutory liens;**

42 **related to the consumer claimant's civil proceeding. All other liens**



1 take priority according to when they attach or by normal operation
2 of law.

3 **Sec. 5. A CPAP provider may not do any of the following:**

4 **(1) Pay or offer to pay any:**

5 **(A) attorney or law firm;**

6 **(B) medical or health care provider;**

7 **(C) chiropractor; or**

8 **(D) physical therapist or occupational therapist;**

9 **or any of their employees, for referring a consumer claimant**
10 **to the CPAP provider or the CPAP provider's business.**

11 **(2) Accept any commissions, referral fees, rebates, or other**
12 **forms of consideration from any:**

13 **(A) attorney or law firm;**

14 **(B) medical or health care provider;**

15 **(C) chiropractor; or**

16 **(D) physical therapist or occupational therapist;**

17 **or any of their employees, in connection with a CPAP**
18 **transaction or a potential CPAP transaction.**

19 **(3) Advertise or communicate in Indiana any materially false**
20 **or misleading information concerning the CPAP provider's**
21 **products and services, whether such an advertisement or**
22 **communication is by mail, brochure, telephone, print, radio,**
23 **television, the Internet, or electronic means.**

24 **(4) Refer, in connection with a CPAP transaction, a consumer**
25 **claimant to any:**

26 **(A) attorney or law firm;**

27 **(B) medical or health care provider;**

28 **(C) chiropractor; or**

29 **(D) physical therapist or occupational therapist;**

30 **or any of their employees. However, if a consumer claimant**
31 **who has consulted the CPAP provider or entered into a CPAP**
32 **transaction with the CPAP provider needs legal**
33 **representation in connection with the consumer claimant's**
34 **civil proceeding or the CPAP transaction, the CPAP provider**
35 **may refer the consumer claimant to a local or state bar**
36 **association's attorney referral service.**

37 **(5) Knowingly enter into a CPAP transaction with a consumer**
38 **claimant who has previously entered into a CPAP transaction**
39 **with another CPAP provider in connection with the same civil**
40 **proceeding, unless the second CPAP provider first pays to, or**
41 **purchases from, the original CPAP provider:**

42 **(A) any outstanding amounts (including the funded**



amount, the contract amount, and any charges) under the first CPAP provider's CPAP contract with the consumer claimant; or

(B) any other amount agreed to by the CPAP providers; except as otherwise prohibited in the CPAP contract between the original CPAP provider and the consumer claimant. However, two (2) or more CPAP providers may agree to contemporaneously enter into CPAP transactions with a consumer claimant in connection with the same civil proceeding, if the consumer claimant consents in writing to the arrangement and, if the consumer claimant is represented by an attorney in the civil proceeding, each CPAP provider that enters into a CPAP transaction with the consumer claimant provides to the consumer claimant's attorney the written notice required under IC 24-4.3-3-1(c).

(6) Make, or receive the right to make, any decisions with respect to the conduct, settlement, or resolution of a consumer claimant's civil proceeding. However, a CPAP provider may request from a consumer claimant or, subject to the consent of the consumer claimant's attorney, from the consumer claimant's attorney periodic updates or other information concerning the consumer claimant's civil proceeding, if the nature, timing, and frequency of the requests:

(A) are set forth in the CPAP contract, as required by IC 24-4.3-3-2(f); and

(B) are not such as to be harassing to the consumer claimant or, if the consumer claimant's attorney has consented to the requests, to the consumer claimant's attorney.

A CPAP provider's right to request updates or other information under this subdivision does not limit, waive, or abrogate the scope or nature of, and is subject to, any applicable statutory or common law privilege, including the work product doctrine or the attorney client privilege.

(7) Pay or offer to pay for court costs, filing fees, or attorney's fees in connection with a consumer claimant's civil proceeding using funds from the CPAP transaction or any other funds.

Sec. 6. (a) An attorney or a law firm retained by a consumer claimant in a civil proceeding on which a CPAP transaction is based may not have a financial interest in the CPAP provider that enters into the CPAP transaction with the consumer claimant.

(b) An attorney or a law firm that refers a consumer claimant



1 to the attorney or law firm retained by a consumer claimant in a
 2 civil proceeding on which a CPAP transaction is based may not
 3 have a financial interest in the CPAP provider that enters into the
 4 CPAP transaction with the consumer claimant.

5 Sec. 7. (a) The department may adopt rules under IC 4-22-2,
 6 including emergency rules adopted in the manner provided by
 7 IC 4-22-2-37.1, to implement this chapter. In adopting rules or
 8 emergency rules under this section, the department may set caps
 9 or other limits on the charges that a CPAP provider may impose
 10 for specified services provided, or costs incurred, by a CPAP
 11 provider under a CPAP contract, as described in section 3(b)(2) of
 12 this chapter.

13 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
 14 adopted by the department in the manner provided by
 15 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 16 that supersedes the emergency rule is adopted by the department
 17 under IC 4-22-2-24 through IC 4-22-2-36.

18 Chapter 5. Violations

19 Sec. 1. For purposes of this chapter, a violation of, or
 20 compliance with, this article includes a violation of, or compliance
 21 with:

- 22 (1) the provisions set forth in this article;
- 23 (2) rules adopted by the department under this article;
- 24 (3) any policy, guidance document, or order adopted or issued
 25 by the department in connection with this article; or
- 26 (4) any other state or federal law, regulation, or rule
 27 applicable to CPAP transactions or CPAP providers.

28 Sec. 2. (a) The department may examine the books, accounts,
 29 and records of a CPAP provider and may make investigations to
 30 determine compliance with this article.

31 (b) A CPAP provider shall pay all reasonably incurred costs of
 32 an examination under this section in accordance with the fee
 33 schedule adopted under IC 28-11-3-5. A fee established by the
 34 department under IC 28-11-3-5 may be charged for each day a fee
 35 under this section is delinquent.

36 (c) To discover violations of this article or to secure information
 37 necessary for the enforcement of this article, the department may
 38 investigate any:

- 39 (1) CPAP provider that holds a registration certificate under
 40 this article; or
- 41 (2) person that the department suspects to be operating as a
 42 CPAP provider in Indiana:



1 (A) without a certificate of registration; or

2 (B) otherwise in violation of this article.

3 The department has all investigatory and enforcement authority
4 under this chapter that the department has under IC 28-11 with
5 respect to financial institutions. If the department conducts an
6 investigation under this section, the registered CPAP provider or
7 other person investigated shall pay all reasonably incurred costs of
8 the investigation in accordance with the fee schedule adopted
9 under IC 28-11-3-5.

10 (d) If a CPAP provider contracts with an outside vendor to
11 provide a service that would otherwise be undertaken internally by
12 the CPAP provider and be subject to the department's routine
13 examination procedures, the person that provides the service to the
14 CPAP provider shall, at the request of the director, submit to an
15 examination by the department. If the director determines that an
16 examination under this subsection is necessary or desirable, the
17 examination may be made at the expense of the person to be
18 examined. If the person to be examined under this subsection
19 refuses to permit the examination to be made, the director may
20 order any CPAP provider that receives services from the person
21 refusing the examination to:

22 (1) discontinue receiving one (1) or more services from the
23 person; or

24 (2) otherwise cease conducting business with the person.

25 Sec. 3. (a) If the department determines that a reasonable belief
26 exists that a person is operating without a valid certificate of
27 registration or in violation of this article, the department may
28 investigate the person.

29 (b) If a person knowingly acts as a CPAP provider without a
30 certificate of registration required by IC 24-4.3-2, any resulting
31 CPAP contract or CPAP transaction entered into by the CPAP
32 provider and a consumer claimant is void and the consumer
33 claimant is not required to pay to the CPAP provider any amounts
34 in connection with the CPAP contract or CPAP transaction,
35 including the funded amount, the contract amount, or any charges.
36 If the consumer claimant has paid to the CPAP provider any
37 amounts in connection with the CPAP contract or CPAP
38 transaction, the consumer claimant, or the department on behalf
39 of the consumer claimant, is entitled to recover the amounts from
40 the CPAP provider.

41 Sec. 4. (a) If the department determines, after notice and an
42 opportunity to be heard, that a person has violated this article, the



1 department may, in addition to or instead of all other remedies
 2 available under this article, impose upon the person a civil penalty
 3 not greater than ten thousand dollars (\$10,000) for each violation.

4 (b) In addition to or instead of imposing a civil penalty under
 5 subsection (a), the department may bring a civil action against a
 6 person for violating this article.

7 (c) In an action brought under subsection (b), if the court finds
 8 that the defendant is guilty of violating this article, the court may
 9 assess a civil penalty not to exceed five thousand dollars (\$5,000)
 10 for each violation.

11 (d) Civil penalties collected under this section shall be deposited
 12 into the financial institutions fund established by IC 28-11-2-9.

13 Sec. 5. (a) The department may adopt rules under IC 4-22-2,
 14 including emergency rules adopted in the manner provided by
 15 IC 4-22-2-37.1, to implement this chapter.

16 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
 17 adopted by the department in the manner provided by
 18 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 19 that supersedes the emergency rule is adopted by the department
 20 under IC 4-22-2-24 through IC 4-22-2-36.

21 SECTION 4. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012,
 22 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2015]: Sec. 202. (a) As used in this section, "balloon
 24 payment", with respect to a mortgage transaction, means any payment
 25 that:

- 26 (1) the creditor requires the debtor to make at any time during the
- 27 term of the mortgage;
- 28 (2) represents the entire amount of the outstanding balance with
- 29 respect to the mortgage; and
- 30 (3) the entire amount of which is due as of a specified date or at
- 31 the end of a specified period;

32 if the aggregate amount of the minimum periodic payments required
 33 under the mortgage would not fully amortize the outstanding balance
 34 by the specified date or at the end of the specified period. The term
 35 does not include a payment required by a creditor under a due-on-sale
 36 clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by
 37 a creditor under a provision in the mortgage that permits the creditor
 38 to accelerate the debt upon the debtor's default or failure to abide by the
 39 material terms of the mortgage.

40 (b) This article does not apply to the following:

- 41 (1) Extensions of credit to government or governmental agencies
- 42 or instrumentalities.



- 1 (2) The sale of insurance by an insurer, except as otherwise
2 provided in the chapter on insurance (IC 24-4.5-4).
- 3 (3) Transactions under public utility, municipal utility, or
4 common carrier tariffs if a subdivision or agency of this state or
5 of the United States regulates the charges for the services
6 involved, the charges for delayed payment, and any discount
7 allowed for early payment.
- 8 (4) The rates and charges and the disclosure of rates and charges
9 of a licensed pawnbroker established in accordance with a statute
10 or ordinance concerning these matters.
- 11 (5) A sale of goods, services, or an interest in land in which the
12 goods, services, or interest in land are purchased primarily for a
13 purpose other than a personal, family, or household purpose.
- 14 (6) A loan in which the debt is incurred primarily for a purpose
15 other than a personal, family, or household purpose.
- 16 (7) An extension of credit primarily for a business, a commercial,
17 or an agricultural purpose.
- 18 (8) An installment agreement for the purchase of home fuels in
19 which a finance charge is not imposed.
- 20 (9) Loans made, insured, or guaranteed under a program
21 authorized by Title IV of the Higher Education Act of 1965 (20
22 U.S.C. 1070 et seq.).
- 23 (10) Transactions in securities or commodities accounts in which
24 credit is extended by a broker-dealer registered with the Securities
25 and Exchange Commission or the Commodity Futures Trading
26 Commission.
- 27 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
28 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:
29 (A) in compliance with the requirements of; and
30 (B) by a community development corporation (as defined in
31 IC 4-4-28-2) acting as a subrecipient of funds from;
32 the Indiana housing and community development authority
33 established by IC 5-20-1-3.
- 34 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
35 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien
36 mortgage transaction made by an entity that exclusively uses
37 funds provided by the United States Department of Housing and
38 Urban Development under Title 1 of the Housing and Community
39 Development Act of 1974, Public Law 93-383, as amended (42
40 U.S.C. 5301 et seq.).
- 41 (13) The United States, any state or local government, or any
42 agency or instrumentality of any governmental entity, including



United States government sponsored enterprises.

(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the following criteria are satisfied:

(A) Subject to clause (B), the organization originates only one (1) or both of the following types of mortgage transactions:

(i) Zero (0) interest first lien mortgage transactions.

(ii) Zero (0) interest subordinate lien mortgage transactions.

(B) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).

(C) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(D) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(E) The organization uses only:

(i) unpaid volunteers; or

(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (A).

(F) The organization does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

(15) A bona fide nonprofit organization (as defined in section 301.5(45) of this chapter) if the following criteria are satisfied:

(a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301.5(45) of this chapter).

(b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.

(16) A civil proceeding advance payment transaction (as



1 **defined in IC 24-4.3-1-6).**
2 **SECTION 5. An emergency is declared for this act.**



Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that SB 373, currently assigned to the Committee on Judiciary, be reassigned to the Committee on Civil Law.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 373, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:

- (1) the creditor requires the debtor to make at any time during the term of the mortgage;
- (2) represents the entire amount of the outstanding balance with respect to the mortgage; and
- (3) the entire amount of which is due as of a specified date or at the end of a specified period;

if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

(b) This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or



common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

(4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.

(5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.

(6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.

(9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

(A) in compliance with the requirements of; and

(B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.

(12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.

(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the



following criteria are satisfied:

- (A) Subject to clause (B), the organization originates only one
 - (1) or both of the following types of mortgage transactions:
 - (i) Zero (0) interest first lien mortgage transactions.
 - (ii) Zero (0) interest subordinate lien mortgage transactions.
 - (B) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).
 - (C) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
 - (D) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.
 - (E) The organization uses only:
 - (i) unpaid volunteers; or
 - (ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;
 to originate the mortgage transactions described in clause (A).
 - (F) The organization does not charge loan origination fees in connection with the mortgage transactions described in clause (A).
- (15) A bona fide nonprofit organization (as defined in section 301.5(45) of this chapter) if the following criteria are satisfied:
- (a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301.5(45) of this chapter).
 - (b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.
- (16) Civil justice funding (as defined in IC 24-11-1-1(3)) or a civil justice funding company (as defined in IC 24-11-1-1(4))."**



Page 1, delete lines 6 through 16.

Page 2, delete lines 1 through 19.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 373 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 373 be amended to read as follows:

Page 11, line 20, delete "registered" and insert **"applies for registration"**.

Page 11, line 21, delete "January 1, 2015," and insert **"June 30, 2015,"**.

Page 11, line 21, delete "July 1, 2015," and insert **"January 1, 2016,"**.

Page 11, line 23, after "state." insert **"However, if the secretary of state denies the civil justice funding company's application under this chapter, the person may not enter into, or offer to enter into, any new civil justice funding transaction during the period beginning on the effective date of the department's denial under this section, and ending on the effective date of any certificate of registration subsequently issued to the person by the secretary of state under this chapter, subject to the person's right to a review under section 5 of this chapter, and to any right to a stay or an appeal of the denial available under IC 4-21.5."**

Page 11, line 24, delete "January 1, 2015," and insert **"July 1, 2015,"**.

(Reference is to SB 373 as printed February 10, 2015.)

HEAD



SENATE MOTION

Madam President: I move that Senate Bill 373 be amended to read as follows:

Page 1, delete lines 1 through 5, begin a new paragraph and insert: "SECTION 1. IC 4-6-2-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 13. The attorney general may adopt and enforce rules under IC 4-22-2 that are necessary to carry out IC 24-11.**".

Page 10, line 25, delete "secretary of state" and insert "**attorney general**".

Page 10, line 28, delete "secretary of state" and insert "**attorney general**".

Page 10, line 28, after "information the" delete "secretary" and insert "**attorney general**".

Page 10, line 29, delete "of state".

Page 10, line 31, after "by a" insert "**one thousand**".

Page 10, line 31, delete "(\$500)" and insert "**(\$1,500)**".

Page 10, line 32, delete "two" and insert "**five**".

Page 10, line 32, delete "(\$200)" and insert "**(\$500)**".

Page 10, line 36, delete "secretary of state," and insert "**attorney general,**".

Page 10, line 41, delete "secretary of state," and insert "**attorney general,**".

Page 10, line 42, delete "secretary of state," and insert "**attorney general,**".

Page 10, line 42, after "the" delete "secretary of state" and insert "**attorney general**".

Page 11, line 10, delete "secretary of state" and insert "**attorney general**".

Page 11, line 12, delete "secretary of state" and insert "**attorney general**".

Page 11, line 16, delete "secretary of state" and insert "**attorney general**".

Page 11, line 18, delete "secretary of state's" and insert "**attorney general's**".

Page 11, line 21, delete "secretary of state" and insert "**attorney general**".

Page 11, line 23, delete "secretary of state." and insert "**attorney general.**".

Page 11, line 28, delete "secretary of state" and insert "**attorney general**".



Page 11, line 29, delete "secretary of state." and insert "**attorney general.**".

Page 11, line 32, delete "secretary of state" and insert "**attorney general**".

(Reference is to SB 373 as printed February 10, 2015.)

HEAD

SENATE MOTION

Madam President: I move that Senate Bill 373 be amended to read as follows:

Page 6, delete lines 13 through 32.

Page 7, delete lines 10 through 11.

Page 7, line 12, delete "(6)" and insert "**(5)**".

Page 7, line 22, delete "(7)" and insert "**(6)**".

Page 7, line 29, delete "(8)" and insert "**(7)**".

Page 9, line 9, delete "OR YOUR ATTORNEY".

(Reference is to SB 373 as printed February 10, 2015.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Engrossed SB 373, which is eligible for third reading, be returned to second reading for purposes of amendment.

HEAD



SENATE MOTION

Madam President: I move that Senate Bill 373 be amended to read as follows:

Page 11, line 1, delete "secretary of state" and insert "**attorney general**".

Page 11, line 5, delete "department's" and insert "**attorney general's**".

Page 11, line 7, delete "secretary of state" and insert "**attorney general**".

(Reference is to SB 373 as reprinted February 18, 2015.)

HEAD

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 373, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 4, begin a new paragraph and insert: "SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.153-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Notice shall be given under this section concerning the following:

(1) A safety order under IC 22-8-1.1.

(2) Any order that:

(A) imposes a sanction on a person or terminates a legal right, duty, privilege, immunity, or other legal interest of a person;

(B) is not described in section 4 or 5 of this chapter or IC 4-21.5-4; and

(C) by statute becomes effective without a proceeding under this chapter if there is no request for a review of the order within a specified period after the order is issued or served.

(3) A notice of program reimbursement or equivalent determination or other notice regarding a hospital's reimbursement issued by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning regarding a hospital's year end cost settlement.

(4) A determination of audit findings or an equivalent determination by the office of Medicaid policy and planning or by



a contractor of the office of Medicaid policy and planning arising from a Medicaid postpayment or concurrent audit of a hospital's Medicaid claims.

(5) A license **suspension or** revocation under:

- (A) IC 24-4.4-2;
- (B) IC 24-4.5-3;
- (C) IC 28-1-29;
- (D) IC 28-7-5;
- (E) IC 28-8-4; or
- (F) IC 28-8-5.

(6) An order issued by the:

- (A) division of aging or the bureau of aging services; or
- (B) division of disability and rehabilitative services or the bureau of developmental disabilities services;

against providers regulated by the division of aging or the bureau of developmental disabilities services and not licensed by the state department of health under IC 16-27 or IC 16-28.

(7) The denial, suspension, or revocation of a certificate of registration under IC 24-4.3.

(b) When an agency issues an order described by subsection (a), the agency shall give notice to the following persons:

- (1) Each person to whom the order is specifically directed.
- (2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice must include the following:

- (1) A brief description of the order.
- (2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.
- (3) Any other information required by law.

(d) An order described in subsection (a) is effective fifteen (15) days after the order is served, unless a statute other than this article specifies a different date or the agency specifies a later date in its order. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of an order described in subsection (a).

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person



who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

SECTION 2. IC 4-21.5-3-7, AS AMENDED BY P.L.6-2012, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2.2 applies, a person must comply with IC 4-15-2.2-42. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

- (1) States facts demonstrating that:
 - (A) the petitioner is a person to whom the order is specifically directed;
 - (B) the petitioner is aggrieved or adversely affected by the order; or
 - (C) the petitioner is entitled to review under any law.
- (2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:
 - (A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;
 - (B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and
 - (C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of



issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) with respect to an order described in section 4, 5, 6(a)(1), 6(a)(2), ~~or 6(a)(5)~~, **or 6(a)(7)** of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) with respect to a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall assign an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding,



and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

SECTION 3. IC 24-4.3 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 4.3. CIVIL PROCEEDING ADVANCE PAYMENT TRANSACTIONS

Chapter 1. Application, Construction, and Definitions

Sec. 1. This article applies to:

- (1) civil proceeding advance payment transactions; and
 - (2) civil proceeding advance payment contracts;
- offered or entered into after June 30, 2015.

Sec. 2. (a) As used in this article, "charge", with respect to a CPAP transaction, means an amount that:

- (1) is imposed by a CPAP provider and payable or assignable by or on behalf of a consumer claimant; and
- (2) is in addition to the funded amount and the contract amount;

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount, or of how the amount is determined or calculated by the CPAP provider.

(b) The term includes any:

- (1) administrative, origination, or underwriting fee;
 - (2) case review, case servicing, or document management fee;
- or
- (3) other fee related to services provided or costs incurred by the CPAP provider in connection with the CPAP transaction; imposed by the CPAP provider and payable or assignable by or on behalf of the consumer claimant, regardless of the term used by the CPAP provider in the CPAP contract to identify the amount, or of how the amount is determined or calculated by the CPAP provider.

Sec. 3. (a) As used in this article, "civil proceeding" means:



- (1) a civil action;
- (2) a mediation, an arbitration, or any other alternative dispute resolution proceeding; or
- (3) an administrative proceeding before:
 - (A) an agency or instrumentality of the state; or
 - (B) a political subdivision, or an agency or instrumentality of a political subdivision, of the state;

that is filed in, or is under the jurisdiction of, a court with jurisdiction in Indiana, a tribunal in Indiana, or an agency or instrumentality described in subdivision (3) in Indiana.

(b) The term includes all proceedings arising out of or relating to the proceeding described in subsection (a), including any:

- (1) proceedings on appeal or remand; and
- (2) enforcement, ancillary, or parallel proceedings.

Sec. 4. As used in this article, "civil proceeding advance payment contract", or "CPAP contract", means a contract for a CPAP transaction that a CPAP provider enters into, or offers to enter into, with a consumer claimant.

Sec. 5. (a) As used in this article, "civil proceeding advance payment provider", or "CPAP provider", means a person that:

- (1) enters into, or offers to enter into, a CPAP transaction with a consumer claimant in connection with a civil proceeding; and
- (2) is registered with, or is required to be registered with, the department under IC 24-4.3-2.

(b) The term does not include any of the following:

- (1) An immediate family member of a consumer claimant.
- (2) A financial institution, a creditor subject to IC 24-4.5, or any other person:
 - (A) that provides financing to a CPAP provider; or
 - (B) to whom a CPAP provider grants a security interest or assigns any rights or interest in a CPAP transaction.
- (3) An attorney, an accountant, a tax consultant, a public or private benefits planning professional, or a financial professional who provides services to a consumer claimant in connection with a civil proceeding.

Sec. 6. (a) As used in this article, "civil proceeding advance payment transaction", or "CPAP transaction", means a nonrecourse transaction in which a CPAP provider provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:



(1) required only if the consumer claimant prevails in the civil proceeding; and

(2) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(b) The term includes a transaction:

(1) that is structured as a purchase; and

(2) in which the CPAP provider purchases from the consumer claimant a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

Sec. 7. As used in this article, "consumer claimant" means an individual:

(1) who is or may become a plaintiff, a claimant, or a demandant in a civil proceeding; and

(2) who:

(A) is offered a CPAP transaction by a CPAP provider; or

(B) enters into a CPAP transaction with a CPAP provider;

regardless of whether the individual is a resident of Indiana.

Sec. 8. (a) As used in this article, "contract amount", with respect to a CPAP transaction, means an amount that is:

(1) in addition to the funded amount;

(2) payable or assignable to the CPAP provider only if the consumer claimant prevails in the consumer claimant's civil proceeding; and

(3) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution;

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount, or of how the amount is determined or calculated by the CPAP provider.

(b) The term does not include charges.

Sec. 9. As used in this article, "department" refers to the members of the department of financial institutions.

Sec. 10. As used in this article, "director" refers to the director of the department of financial institutions or the director's designee.

Sec. 11. (a) As used in this article, "funded amount", with respect to a CPAP transaction, means the amount of money:

(1) that is provided to the consumer claimant by the CPAP provider; and



(2) the repayment of which is:

- (A) required only if the consumer claimant prevails in the consumer claimant's civil proceeding; and**
- (B) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution;**

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount.

(b) In the case of a CPAP transaction described in section 6(b) of this chapter, the term means the price:

- (1) that is paid by the CPAP provider in purchasing from the consumer claimant a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding; and**
- (2) the amount of which must be repaid only:**
 - (A) if the consumer claimant prevails in the consumer claimant's civil proceeding; and**
 - (B) from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution;**

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount.

(c) The term does not include:

- (1) the contract amount; or**
- (2) charges.**

Sec. 12. As used in this article, "funding date", with respect to a CPAP transaction, means the date on which a CPAP provider transfers the funded amount to the consumer claimant by:

- (1) personal delivery;**
- (2) wire, automated clearing house, or other electronic means;**
- or**
- (3) insured, certified, or registered United States mail.**

Chapter 2. Registration of CPAP Providers With the Department

Sec. 1. Except as provided in section 2(g) of this chapter, after June 30, 2015, a person may not enter into, or offer to enter into, a CPAP transaction with a consumer claimant, or otherwise engage in business as a CPAP provider:

- (1) except as authorized by this article; and**
- (2) unless the person first receives a certificate of registration from the department under this chapter.**

Sec. 2. (a) An applicant for a certificate of registration under



this chapter shall file an application with the department in the form and manner prescribed by the director. An application form prescribed by the director under this chapter must require the applicant to provide the information that the director determines is necessary to evaluate the character and fitness of the applicant.

(b) The department may issue a certificate of registration under this chapter if the department finds that an applicant's business will be operated honestly and fairly within the purposes of this article. If the department denies an application under this chapter, the director shall provide to the applicant a written notice stating that the application has been denied and setting forth the reasons for the denial. In rules adopted under:

(1) section 4 of this chapter; or

(2) IC 24-4.3-5-5;

the department may set forth circumstances under which a certificate issued under this chapter may be revoked or suspended for cause, including the failure of any applicant or certificate holder to pay an application fee or a renewal fee described in subsection (f). A notice of a denial, revocation, or suspension issued by the department under this subsection is effective in accordance with IC 4-21.5-3-6(d).

(c) Upon written request, an applicant for a certificate of registration under this chapter is entitled to an administrative review, in the manner provided in IC 4-21.5, of the issue of the applicant's qualifications for a certificate of registration under this chapter if either of the following applies:

(1) The director provides to the applicant a written notice that the applicant's application has been denied, as described in subsection (b), and the applicant files a timely request for a review under IC 4-21.5-3-7.

(2) The department does not issue a decision on the applicant's application not later than sixty (60) days after the date the application is filed, and the applicant files a request for an administrative review in accordance with the procedures set forth in IC 4-21.5-3-7 not later than seventy-five (75) days after the date the application is filed.

(d) A certificate of registration issued by the department under this chapter must be renewed with the department on the dates and in the manner and form prescribed by the director, but not less frequently than every two (2) years.

(e) If, at any time, any information contained in:

(1) an initial application under subsection (a); or



(2) a renewal form or application under subsection (d); is or becomes inaccurate or incomplete in a material respect, the applicant or registered CPAP provider promptly shall file a correcting amendment with the department in the form and manner prescribed by the director.

(f) The department may establish, in an amount fixed by the department under IC 28-11-3-5, either of the following to cover the department's expenses in administering this article:

- (1) An application fee that an applicant must submit with an initial application under subsection (a).
- (2) A renewal fee that a registered CPAP provider must submit with a renewal form or application under subsection (d).

The department may impose a fee under IC 28-11-3-5 for each day that an application fee or a renewal fee, or any related documents that are required to be submitted with an initial application or a renewal application, are delinquent.

(g) Notwithstanding subsection (a), a person that:

- (1) before May 13, 2015, enters into one (1) or more CPAP transactions that are:
 - (A) made with a consumer claimant in connection with a civil proceeding; and
 - (B) outstanding on July 1, 2015; and
- (2) submits an application for registration under this chapter to the department after June 30, 2015, and before January 1, 2016;

may enter into, or offer to enter into, a CPAP transaction with a consumer claimant, or otherwise engage in business as a CPAP provider, while the person's application for registration under this chapter is pending with the department. However, if the department denies the person's application under this chapter, the person may not enter into, or offer to enter into, any new CPAP transaction during the period beginning on the effective date of the department's denial under subsection (b) and ending on the effective date of any certificate of registration subsequently issued to the person by the department under this chapter, subject to the person's right to a review under subsection (c) and to any right to a stay or an appeal of the denial available under IC 4-21.5. A CPAP transaction entered into by the person before the effective date of the department's denial under subsection (b) is not subject to this article, and a CPAP contract entered into by the person and a consumer claimant before the effective date of the department's



denial under subsection (b) remains in effect according to its terms, notwithstanding the department's denial of an application described in subdivision (2).

Sec. 3. (a) Each application for a certificate of registration under section 2 of this chapter must be accompanied by proof that the applicant has executed a surety bond in accordance with this section.

(b) A surety bond issued under this section must:

- (1)** be in a form prescribed by the director;
- (2)** be in effect during the term of the certificate of registration issued under this chapter;
- (3)** be payable to the department for the benefit of:
 - (A)** the state; and
 - (B)** consumer claimants who enter into a CPAP transaction with the CPAP provider;
- (4)** be in an amount determined by the director, but not greater than fifty thousand dollars (\$50,000); and
- (5)** have payment conditioned upon the CPAP provider's or any of the CPAP provider's employees' or agents' noncompliance with or violation of this article or other applicable federal or state laws or regulations.

(c) Beginning with the first renewal of a certificate of registration under this chapter, for each renewal period that a registered CPAP provider continues to engage in business as a CPAP provider in connection with any civil proceedings, the registered CPAP provider shall file a new or an additional surety bond in an amount that ensures that the registered CPAP provider's surety bond under this section is equal to the amount determined by the director under subsection (b)(4).

(d) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the registered CPAP provider for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(e) If for any reason a surety terminates a bond issued under this section, the registered CPAP provider shall immediately notify the department and file a new surety bond in the amount determined by the director under subsection (b)(4).



(f) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(g) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

Sec. 4. (a) The department may adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to implement this chapter. Rules or emergency rules adopted by the department under this section must take effect by a date that will enable a person to apply to the department for a certificate of registration under this chapter beginning July 1, 2015.

(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department in the manner provided by IC 4-22-2-37.1 to implement this chapter expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36.

Chapter 3. Contract Requirements and Disclosures

Sec. 1. (a) Before presenting a CPAP contract to a consumer claimant for the consumer claimant's signature, a CPAP provider shall ensure that the CPAP contract:

- (1) is complete;
- (2) has been filled in to include all amounts, dates, names, terms, provisions, and information specific to the CPAP contract, the CPAP provider, the consumer claimant, and the consumer claimant's civil proceeding; and
- (3) meets the requirements of this chapter, including the disclosure requirements set forth in section 2 of this chapter.

(b) Each page of a CPAP contract must include the initials of the consumer claimant.

(c) If a consumer claimant is represented by an attorney in the civil proceeding on which a CPAP transaction is based, the CPAP provider shall, not later than three (3) days after the CPAP contract is executed by the CPAP provider and the consumer claimant, send to the consumer claimant's attorney by insured, certified, or registered United States mail a written notice that:

- (1) states that a CPAP contract has been entered into by the consumer claimant and the CPAP provider;
- (2) directs the consumer claimant's attorney to disburse to the CPAP provider through:
 - (A) a trust account of the consumer claimant's attorney; or



(B) a settlement fund established to receive the proceeds of the civil proceeding on behalf of the consumer claimant; any proceeds of the consumer claimant's civil proceeding that the CPAP provider may receive under IC 24-4.3-4-4(c); and (3) includes the name under which the CPAP provider does business, an address to which the consumer claimant's attorney may address correspondence, and the contact information for the CPAP provider's employee or agent with whom the consumer claimant's attorney may correspond.

(d) A CPAP contract shall be executed in duplicate. Upon execution of the CPAP contract, the CPAP provider shall:

- (1) furnish one (1) duplicate original and at least one (1) copy of the CPAP contract to the consumer claimant; and
- (2) retain for the CPAP provider's records one (1) duplicate original and at least one (1) copy of the CPAP contract.

(e) A CPAP provider may not use any CPAP contract form, other than a standard CPAP contract form prescribed by the department in rules adopted by the department under section 3 of this chapter, in connection with a civil proceeding unless the department first approves the CPAP contract form.

Sec. 2. (a) A CPAP contract must include the disclosures set forth in this section. The disclosures required by this section:

- (1) constitute material terms of the CPAP contract; and
- (2) must:
 - (A) be set forth in at least 12 point boldface type and comply with any other typeface or stylistic specifications set forth in this section; and
 - (B) be placed clearly and conspicuously within the contract.

(b) The front page of a CPAP contract must include, under appropriate headings, language specifying the following:

- (1) The funded amount to be paid to the consumer claimant by the CPAP provider.
- (2) The funding date.
- (3) An itemization of all charges, whether assessed one (1) time or on a recurring basis, that are payable or assignable by the consumer claimant to the CPAP provider. For each charge listed, the CPAP provider shall identify whether the charge:
 - (A) is to be assigned by the consumer claimant to the CPAP provider from the proceeds, if any, of the consumer claimant's civil proceeding; or



(B) is otherwise payable by the consumer claimant to the CPAP provider.

Charges described in clause (A) must be included in the payment schedule described in subdivision (5). For charges described in clause (B), the CPAP provider shall set forth a separate payment schedule identifying the dates and amounts due.

(4) An identification of the following amounts to be assigned by the consumer claimant to the CPAP provider if the resolution of the consumer claimant's civil proceeding results in proceeds to the consumer claimant:

(A) The funded amount.

(B) The contract amount. In identifying the contract amount under this clause, it is sufficient for the CPAP provider to identify the method, formula, or multiplier (as required by IC 24-4.3-4-2(1)(A)) by which the contract amount will be determined as of the date on which the CPAP provider receives payment from the proceeds of the consumer claimant's civil proceeding.

(5) For amounts assignable by the consumer claimant to the CPAP provider from the proceeds of the consumer claimant's civil proceeding (including the funded amount, the contract amount, and any applicable charges), a payment schedule that lists:

(A) the dates; and

(B) the amounts assignable by the consumer claimant to the CPAP provider as of each date listed (regardless of whether and when such amounts are actually paid or assigned, depending on the outcome of the consumer's civil proceeding and the date on which any proceeds from the civil proceeding become available for disbursement);

beginning with the date that is one hundred eighty (180) days after the funding date, continuing every one hundred eighty (180) days thereafter, and ending with the date the amounts are actually paid or assigned to the CPAP provider, as required by IC 24-4.3-4-2(1)(B).

(c) A CPAP contract must contain, in text that is surrounded by a box, a statement setting forth a right of rescission that allows the consumer claimant to cancel the contract without penalty or further obligation if the consumer claimant does either of the following:

(1) Not later than five (5) days after the funding date, returns



to the CPAP provider the full funded amount by hand delivering the CPAP provider's uncashed check to the CPAP provider's business location.

(2) Mails, to the address specified in the CPAP contract and by insured, certified, or registered United States mail:

- (A) a notice of cancellation; and
- (B) the full funded amount, in the form of:
 - (i) the CPAP provider's uncashed check;
 - (ii) a registered or certified check; or
 - (iii) a money order;

in a mailing that is postmarked not later than five (5) days after the funding date.

(d) A CPAP contract must contain, in text that is printed in all capital letters and surrounded by a box, the following statement:

"THE FUNDED AMOUNT (or other term used by the CPAP provider in the CPAP contract), THE CONTRACT AMOUNT (or other term used by the CPAP provider in the CPAP contract), AND THE _____ (insert names of any charges the repayment of which is to be sourced from the proceeds of the consumer claimant's civil proceeding) ARE PAYABLE ONLY FROM THE PROCEEDS OF YOUR CIVIL PROCEEDING, AND ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR CIVIL PROCEEDING. YOU WILL NOT OWE (insert name of CPAP provider) THE FUNDED AMOUNT (or other term used by the CPAP provider in the CPAP contract), THE CONTRACT AMOUNT (or other term used by the CPAP provider in the CPAP contract), OR THE _____ (insert names of any charges the repayment of which is to be sourced from the proceeds of the consumer claimant's civil proceeding) IF THERE ARE NO PROCEEDS FROM YOUR CIVIL PROCEEDING, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (insert name of CPAP provider).".

(e) A CPAP contract must contain a statement as to whether and under what circumstances:

- (1) the consumer claimant's rights and obligations under the CPAP contract may be sold, assigned, pledged, or transferred by the consumer claimant and, if so, whether and at what point the consumer claimant must obtain the consent of, or provide notice to, the CPAP provider of such sale, assignment,



pledge, or transfer; and

(2) the CPAP provider's rights and obligations under a CPAP contract may be sold, assigned, pledged, or transferred by the CPAP provider and, if so, whether and at what point the CPAP provider must obtain the consent of, or provide notice to, the consumer claimant of such sale, assignment, pledge, or transfer.

(f) A CPAP contract must contain a statement as to whether, how often, and under what circumstances the CPAP provider may request from the consumer claimant or, subject to the consent of the consumer claimant's attorney, from the consumer claimant's attorney periodic updates or other information concerning the consumer claimant's civil proceeding, including any of the following documents or information that may be sought by the CPAP provider:

(1) Notice of any receipt by the consumer claimant or, subject to the consent of the consumer claimant's attorney, by the consumer claimant's attorney of proceeds, or written promises to pay proceeds, from the civil proceeding.

(2) Copies of nonprivileged materials, including pleadings, notices, orders, motions, briefs, or other documents filed in the civil proceeding by any person or party.

(3) Documents or verbal information concerning nonprivileged matters or developments in connection with the civil proceeding.

(g) A CPAP contract must contain the following statement immediately above the signature line for the consumer claimant:

"Do not sign this contract before you read it completely or if it contains any blank spaces. You are entitled to a completely filled in copy of this contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on your circumstances, you may want to consult an accountant, a tax consultant, a public or private benefits planning professional, or a financial professional. By signing this contract, you acknowledge that if you are represented by an attorney in your civil proceeding, your attorney has provided no tax, accounting, public or private benefits planning, or financial advice concerning this transaction between you and (insert name of CPAP provider).".

Sec. 3. (a) The department may adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to implement this chapter. In adopting rules or



emergency rules under this section, the department may prescribe a standard CPAP contract form that complies with this chapter for use by CPAP providers in entering into CPAP transactions with consumer claimants. Rules or emergency rules adopted by the department to prescribe a standard CPAP contract form must take effect by a date that will enable such a form to be available to CPAP providers beginning July 1, 2015.

(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department in the manner provided by IC 4-22-2-37.1 to implement this chapter expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36.

Chapter 4. Requirements and Prohibitions

Sec. 1. Subject to section 3(b) of this chapter, the total funded amount in a CPAP transaction in connection with any one (1) civil proceeding may not exceed five thousand dollars (\$5,000). A CPAP provider shall transfer the funded amount to a consumer claimant not later than the funding date, as set forth in the CPAP contract, by one (1) of the following means:

- (1) Personal delivery.
- (2) Wire, automated clearing house, or other electronic means.
- (3) Insured, certified, or registered United States mail.

Sec. 2. Subject to section 3 of this chapter, the contract amount in a CPAP transaction:

- (1) must be calculated as a predetermined amount:
 - (A) according to a method, formula, or multiplier determined by the CPAP provider, as described in IC 24-4.3-3-2(b)(4)(B); and
 - (B) based on one hundred eighty (180) day intervals measured from the funding date through the date of assignment to the CPAP provider, as described in IC 24-4.3-3-2(b)(5);
- (2) may be based on, or determined as a percentage of, the funded amount; and
- (3) may not be determined as a percentage of the consumer claimant's recovery from the consumer claimant's civil proceeding.

Sec. 3. (a) Regardless of the contract amount that results from the calculation described in section 2(1) of this chapter, a CPAP provider may not assess or collect, with respect to any one (1) CPAP transaction, a contract amount that exceeds twenty-five



percent (25%) of the funded amount.

(b) A CPAP provider may not:

(1) structure a CPAP transaction arising from the same civil proceeding:

(A) as more than one (1) transaction; or

(B) in any other manner; or

(2) impose any charges under the CPAP contract, whether assignable from the proceeds of the consumer claimant's civil proceeding or otherwise payable to the CPAP provider, in an amount that:

(A) exceeds any amount, percentage, limit, or cap concerning charges and prescribed by the department in rules adopted under section 7 of this chapter; or

(B) grossly exceeds the value of the services provided or costs incurred by the CPAP provider in consideration of the charges;

for the purpose of avoiding the prohibition set forth in subsection (a) or the limitation on the funded amount set forth in section 1 of this chapter.

Sec. 4. (a) Subject to IC 24-4.3-3-2(e)(1) and except as otherwise provided in a CPAP contract and agreed to by a consumer claimant, a contingent right to receive a share of the potential proceeds of a consumer claimant's civil proceeding (whether the proceeds result from a judgment, a settlement, or some other resolution) may be sold, assigned, pledged, or transferred by the consumer claimant.

(b) Subject to IC 24-4.3-3-2(e)(2) and except as otherwise provided in a CPAP contract and agreed to by a consumer claimant, a CPAP provider's rights and obligations under a CPAP contract may be sold, assigned, pledged, or transferred by the CPAP provider.

(c) A CPAP provider's right to receive a share of the potential proceeds of a consumer claimant's civil proceeding is subordinate only to any:

(1) attorney's lien;

(2) medical liens; or

(3) statutory liens;

related to the consumer claimant's civil proceeding. All other liens take priority according to when they attach or by normal operation of law.

Sec. 5. A CPAP provider may not do any of the following:

(1) Pay or offer to pay any:



- (A) attorney or law firm;
 - (B) medical or health care provider;
 - (C) chiropractor; or
 - (D) physical therapist or occupational therapist;
- or any of their employees, for referring a consumer claimant to the CPAP provider or the CPAP provider's business.
- (2) Accept any commissions, referral fees, rebates, or other forms of consideration from any:
- (A) attorney or law firm;
 - (B) medical or health care provider;
 - (C) chiropractor; or
 - (D) physical therapist or occupational therapist;
- or any of their employees, in connection with a CPAP transaction or a potential CPAP transaction.
- (3) Advertise or communicate in Indiana any materially false or misleading information concerning the CPAP provider's products and services, whether such an advertisement or communication is by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.
- (4) Refer, in connection with a CPAP transaction, a consumer claimant to any:
- (A) attorney or law firm;
 - (B) medical or health care provider;
 - (C) chiropractor; or
 - (D) physical therapist or occupational therapist;
- or any of their employees. However, if a consumer claimant who has consulted the CPAP provider or entered into a CPAP transaction with the CPAP provider needs legal representation in connection with the consumer claimant's civil proceeding or the CPAP transaction, the CPAP provider may refer the consumer claimant to a local or state bar association's attorney referral service.
- (5) Knowingly enter into a CPAP transaction with a consumer claimant who has previously entered into a CPAP transaction with another CPAP provider in connection with the same civil proceeding, unless the second CPAP provider first pays to, or purchases from, the original CPAP provider:
- (A) any outstanding amounts (including the funded amount, the contract amount, and any charges) under the first CPAP provider's CPAP contract with the consumer claimant; or
 - (B) any other amount agreed to by the CPAP providers;



except as otherwise prohibited in the CPAP contract between the original CPAP provider and the consumer claimant. However, two (2) or more CPAP providers may agree to contemporaneously enter into CPAP transactions with a consumer claimant in connection with the same civil proceeding, if the consumer claimant consents in writing to the arrangement and, if the consumer claimant is represented by an attorney in the civil proceeding, each CPAP provider that enters into a CPAP transaction with the consumer claimant provides to the consumer claimant's attorney the written notice required under IC 24-4.3-3-1(c).

(6) Make, or receive the right to make, any decisions with respect to the conduct, settlement, or resolution of a consumer claimant's civil proceeding. However, a CPAP provider may request from a consumer claimant or, subject to the consent of the consumer claimant's attorney, from the consumer claimant's attorney periodic updates or other information concerning the consumer claimant's civil proceeding, if the nature, timing, and frequency of the requests:

(A) are set forth in the CPAP contract, as required by IC 24-4.3-3-2(f); and

(B) are not such as to be harassing to the consumer claimant or, if the consumer claimant's attorney has consented to the requests, to the consumer claimant's attorney.

A CPAP provider's right to request updates or other information under this subdivision does not limit, waive, or abrogate the scope or nature of, and is subject to, any applicable statutory or common law privilege, including the work product doctrine or the attorney client privilege.

(7) Pay or offer to pay for court costs, filing fees, or attorney's fees in connection with a consumer claimant's civil proceeding using funds from the CPAP transaction or any other funds.

Sec. 6. (a) An attorney or a law firm retained by a consumer claimant in a civil proceeding on which a CPAP transaction is based may not have a financial interest in the CPAP provider that enters into the CPAP transaction with the consumer claimant.

(b) An attorney or a law firm that refers a consumer claimant to the attorney or law firm retained by a consumer claimant in a civil proceeding on which a CPAP transaction is based may not have a financial interest in the CPAP provider that enters into the CPAP transaction with the consumer claimant.



Sec. 7. (a) The department may adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to implement this chapter. In adopting rules or emergency rules under this section, the department may set caps or other limits on the charges that a CPAP provider may impose for specified services provided, or costs incurred, by a CPAP provider under a CPAP contract, as described in section 3(b)(2) of this chapter.

(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department in the manner provided by IC 4-22-2-37.1 to implement this chapter expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36.

Chapter 5. Violations

Sec. 1. For purposes of this chapter, a violation of, or compliance with, this article includes a violation of, or compliance with:

- (1)** the provisions set forth in this article;
- (2)** rules adopted by the department under this article;
- (3)** any policy, guidance document, or order adopted or issued by the department in connection with this article; or
- (4)** any other state or federal law, regulation, or rule applicable to CPAP transactions or CPAP providers.

Sec. 2. (a) The department may examine the books, accounts, and records of a CPAP provider and may make investigations to determine compliance with this article.

(b) A CPAP provider shall pay all reasonably incurred costs of an examination under this section in accordance with the fee schedule adopted under IC 28-11-3-5. A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.

(c) To discover violations of this article or to secure information necessary for the enforcement of this article, the department may investigate any:

- (1)** CPAP provider that holds a registration certificate under this article; or
- (2)** person that the department suspects to be operating as a CPAP provider in Indiana:
 - (A)** without a certificate of registration; or
 - (B)** otherwise in violation of this article.

The department has all investigatory and enforcement authority under this chapter that the department has under IC 28-11 with



respect to financial institutions. If the department conducts an investigation under this section, the registered CPAP provider or other person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5.

(d) If a CPAP provider contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the CPAP provider and be subject to the department's routine examination procedures, the person that provides the service to the CPAP provider shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any CPAP provider that receives services from the person refusing the examination to:

- (1) discontinue receiving one (1) or more services from the person; or
- (2) otherwise cease conducting business with the person.

Sec. 3. (a) If the department determines that a reasonable belief exists that a person is operating without a valid certificate of registration or in violation of this article, the department may investigate the person.

(b) If a person knowingly acts as a CPAP provider without a certificate of registration required by IC 24-4.3-2, any resulting CPAP contract or CPAP transaction entered into by the CPAP provider and a consumer claimant is void and the consumer claimant is not required to pay to the CPAP provider any amounts in connection with the CPAP contract or CPAP transaction, including the funded amount, the contract amount, or any charges. If the consumer claimant has paid to the CPAP provider any amounts in connection with the CPAP contract or CPAP transaction, the consumer claimant, or the department on behalf of the consumer claimant, is entitled to recover the amounts from the CPAP provider.

Sec. 4. (a) If the department determines, after notice and an opportunity to be heard, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this article, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) for each violation.

(b) In addition to or instead of imposing a civil penalty under



subsection (a), the department may bring a civil action against a person for violating this article.

(c) In an action brought under subsection (b), if the court finds that the defendant is guilty of violating this article, the court may assess a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

(d) Civil penalties collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9.

Sec. 5. (a) The department may adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to implement this chapter.

(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department in the manner provided by IC 4-22-2-37.1 to implement this chapter expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36."

Page 4, delete lines 10 through 42, begin a new line single block indented and insert:

"(16) A civil proceeding advance payment transaction (as defined in IC 24-4.3-1-6).

SECTION 4. An emergency is declared for this act."

Delete pages 5 through 11.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 373 as reprinted February 20, 2015.)

BURTON

Committee Vote: yeas 10, nays 0.

